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## **STAFF COMMENTS FOR PLANNING COMMISSION**

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**MEETING DATE:** November 15, 2006

**TEXT AMENDMENT:** **T-378**

**TITLE:** **WAIVER OF HEIGHT REQUIREMENTS  
IN THE RESIDENTIAL DISTRICT OF  
THE CD ZONE**

**REQUEST:** **RECOMMENDATION TO M&CC**

**ADDRESS:** N/A

**ZONE:** CD (Corridor Development) Zone

**APPLICANT/REPRESENTATIVE/ATTORNEY/DEVELOPER:** (as applicable)

**STAFF PERSON:** Greg Ossont, Director  
Planning and Code Administration

**Enclosures:**

Staff Comments  
Index of Memorandum and Exhibits (In **Bold**)

## **STAFF COMMENTS**

A joint public hearing, on T-378, was held on October 16, 2006. The Planning Commission record was held open until November 8, 2006 and is now closed. There are thirteen (13) exhibits in the record including background material from the joint public hearing.

This is a proposal to amend Chapter 24 of the City Code (City Zoning Ordinance), Article III, §24-160G.5, Entitled "Waiver of Development Standards," so as to amend the waiver standards so that the City Council may, by resolution, waive the building and structure height requirements in the Corridor Development Zone (CD zone) as follows: for a Residential District to allow a height not to exceed four (4) stories, or forty-eight (48) feet.

Staff has been working with the owners of the Broadstone Apartments, formerly Stratford Place Apartments, on a potential redevelopment of the property. The proposed project would consist of a combination of single-family townhomes, two-over-two condominiums, and a larger multi-family component including both fee simple and apartment units. The site's current zone, R-20 (medium density residential), would prohibit this and similar projects based upon height and density requirements.

In an effort to both further implement the goals of the Frederick Avenue Corridor Master Plan and the City's strategic directions, staff and the owner, Fairfield Residential, agree that redevelopment under the CD zone, rather than the current R-20 zoning, is desirable. The property, however, is located in the "residential district" of the Frederick Avenue corridor. The CD zone mandates height limits of three (3) stories, not to exceed thirty-five (35) feet in the "residential district" of the Frederick Avenue corridor. The City Council is allowed, in the "employment district" of the CD zone, to waive building and structure height requirements upon confirming a number of specified findings.

This proposed text amendment would grant the Council the ability to grant, on an individual case-by-case basis, building and structure height requirements waivers in the "residential district" upon confirming the same specified findings as for the "employment district".

### **Section 24-160G.5, Waiver of Development Standards**

#### **Subsection A**

The proposed text amendment would reformat this section with the only substantive change being the addition of the language, "City Council may, by resolution, waive the building and structure height requirements in the Corridor Development Zone (CD zone) as follows: for a Residential District to allow a height not to exceed four (4) stories, or forty-eight (48) feet."

This item is on your agenda for a transmittal of a recommendation to the Mayor and Council.

Joint Public Hearing  
October 16, 2006

## **INDEX OF MEMORANDA**

### **T-378**

- 1) Application
- 2) **Draft Ordinance, per City Attorney Borten's review:  
September 27, 2006**
- 3) Letter from Mr. Jody Kline, Miller Miller & Canby, to Mr. Greg Ossont, Director, Planning & Code Administration: August 15, 2006
- 4) Draft Ordinance, August 15, 2006
- 5) Memorandum from Mr. Greg Ossont, Director, Planning & Code Administration, to the Mayor and City Council: August 31, 2006
- 6) Draft City Council minutes from the September 5, 2006 Mayor and City Council meeting
- 7) Letter to Gaithersburg Gazette dated September 20, 2006, requesting a Legal Ad for the September 27 & October 4, 2006, issues.
- 8) Certification of Publication from the Gaithersburg Gazette: October 2, 2006
- 9) Notice of Joint Public Hearing mailed September 29, 2006
- 10) Notice of Joint Public Hearing mailing list
- 11) **Letter from Ms. Pamela Lindstrom, October 2, 2006**
- 12) **Mayor & City Council cover sheet for T-378 Joint Public Hearing: October 16, 2006**
- 13) **Transcript of T-378 Joint Public Hearing: October 16, 2006**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE III, ENTITLED, "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISION 22, ENTITLED, "CD ZONE, CORRIDOR DEVELOPMENT," SECTION 24-160G.5, ENTITLED, "WAIVER OF DEVELOPMENT STANDARDS," TO MODIFY SECTION 24-160G.5(a) TO ADD THAT THE CITY COUNCIL MAY WAIVE HEIGHT REQUIREMENTS IN THE RESIDENTIAL DISTRICT AS WELL AS IN THE EMPLOYMENT DISTRICT

**Text Amendment T-378**

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled that Chapter 24 of the City Code (City Zoning Ordinance), Article III, is amended as follows:

DIVISION 22. CD ZONE, CORRIDOR DEVELOPMENT

\* \* \*

**Sect. 24-160G.5. Waiver of development standards**

(a) The City Council may, by resolution, waive the building and structure height requirements in the corridor development zone (CD zone) [for an employment district only, and allow a height not to exceed eight (8) stories, or ninety (90) feet, upon a finding that] as follows:

- (1) [The applicant will provide either on-site or off-site public amenities to further enhance the corridor development zone and the purposes of the CD zone; and] For a residential district to allow a height not to exceed four (4) stories, or forty-eight (48) feet.
- (2) [The additional height is necessary to implement the master plan and a specific corridor plan for Gaithersburg, or attract an appropriate and compatible type or caliber of user; and] For an employment district to allow a height not to exceed eight stories, or ninety (90) feet.
- [(3) The additional height will be compatible with existing and proposed adjacent land uses and would not detrimentally impact those uses or public facilities serving a specific corridor.]

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

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*Heading or defined term.*

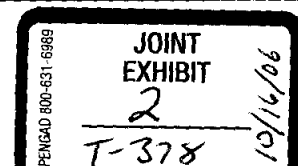
*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by Amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*



- (b) The granting of such waiver shall be based on a finding that:
- (1) The applicant will provide either on-site or off-site public amenities to further enhance the corridor development zone and the purposes of the CD zone; and
  - (2) The additional height is necessary to implement the master plan and a specific corridor plan for Gaithersburg, or attract an appropriate and compatible type or caliber of user; and
  - (3) The additional height will be compatible with existing and proposed adjacent land uses and would not detrimentally impact those uses or public facilities serving a specific corridor.

[b] (c) The City Council may, by resolution, waive setback requirements in the CD zone, upon a finding that:

\* \* \*

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2006. APPROVED/VETOED by the Mayor of the City of Gaithersburg this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_ day of \_\_\_\_\_, 2006, and that the same was approved/vetoed by the Mayor of the City of Gaithersburg on the \_\_\_\_ day of \_\_\_\_\_, 2006. This Ordinance will become effective on the \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
David B. Humpton, City Manager

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Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

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*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by Amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

GO  
421 Gaither Street  
Gaithersburg  
2 October 2006

To: Gaithersburg Mayor and Council,

From: Pamela Lindstrom *Pamela Lindstrom*

Subject: Proposed Text Amendment Concerning Height Limits in the CD Zone

I object to the proposed zoning text amendment permitting waivers to the height limit in the "residential" portion of the Frederick Avenue corridor (the CD zone). The problem is not that I would never support a four or five story building in that corridor. The problem is in permitting them by request from individual developers, rather than via a publicly agreed upon master plan for the corridor.

As you know, the older apartment buildings along Frederick Avenue are very attractive targets for demolition and redevelopment. The fashion among developers at the moment seems to be building townhouses. I reread the portion of the Frederick Avenue master plan covering this area. It is very general and gives no real guidance as to appearance or use; almost the only specific item is the limit to three stories. It doesn't even give any preference to residential development.

I agree that the three story height limit is too low at some sites. But the answer (to this and other issues) is to reopen the master plan for the Corridor, *with time granted by a moratorium on demolition of existing affordable apartments.*

This plan is very ripe for amendment into a real vision with serious public input. This Corridor should be the main street of the City – it can be the city center Gaithersburg has always lacked. It needs a plan for better public transport. It can provide a good share of affordable housing even if some of the old buildings are replaced. But this must be done by an effective master plan, not by waiver!

OCT 2 2006





# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

October 16, 2006

**CALL TO PODIUM:**

**Greg Ossont, Director  
Planning & Code  
Administration**

**RESPONSIBLE STAFF:**

**Greg Ossont, Director  
Planning & Code  
Administration**

**AGENDA ITEM:**

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
x	Joint Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	NA
Advertised	09/27/2006
	10/04/2006
Hearing Date	10/16/2006
Record Held Open	
Policy Discussion	

JOINT  
EXHIBIT

12

T-378

**TITLE: Text Amendment T-378****JOINT PUBLIC HEARING**

Proposal to Amend Chapter 24 of the City Code (City Zoning Ordinance), Article III, §24-160G.5, Entitled "Waiver of Development Standards." so as to Amend the Waiver Standards so That the City Council May, by Resolution, Waive the Building and Structure Height Requirements in the Corridor Development Zone (CD zone) as Follows: for a Residential District to Allow a Height Not to Exceed Four (4) Stories, or Forty-Eight (48) Feet.

**SUPPORTING BACKGROUND:**

Staff has been working with the owners of the Broadstone Apartments, formerly Stratford Place Apartments, on a potential redevelopment of the property.

During discussions with the owner of the property, Fairfield Residential, staff and the owner agree that redevelopment under the CD zone rather than the current R-20 zoning, is desirable in an effort to further implement the Frederick Avenue Master Plan and further the City's strategic directions.

The property is located in the "residential district" of the Frederick Avenue corridor. The CD zone allows height limits of 3 stories, not to exceed 35 feet in the "residential district" of the Frederick Avenue corridor.

Currently, the CD zone allows for a height waiver by resolution of the Mayor and City Council in the "employment district" only.

Continued...

**DESIRED OUTCOME:**

**Hold Public Hearing.**

Staff recommends the Planning Commission to hold the record open until 5:00pm on November 8, 2006 with anticipated recommendation on November 15, 2006. Staff recommends the Mayor and City Council hold the record open until 5:00pm November 28, 2006 with anticipated policy discussion December 4, 2006.

## MAYOR & COUNCIL AGENDA COVER SHEET

Continued....

The height waiver is based upon findings that:

- The project provides on-site or off-site amenities to further enhance the corridor zone and purposes of the CD zone;
- The additional height is necessary to implement the corridor plan or attract an appropriate and compatible type or user;
- The additional height will be compatible with existing and proposed adjacent land uses and not detrimentally impact public facilities serving the corridor.

The proposed text amendment would allow for the Mayor and City Council to also grant a height waiver in the "residential district." The waiver would only allow one additional story, not to exceed 4 stories or 48 feet. It should be noted that the heights of the existing buildings at Broadstone Apartments adjacent to Frederick Avenue are 45 feet and 43 feet.

The aforementioned base findings would also apply and to the "residential district" waiver and would be determined on a case by case basis through a resolution of the Mayor and City Council.

Please note that should the proposed text amendment be approved, a rezoning of the property to the CD zone would still need to occur. The rezoning request would be accompanied by a Schematic Development Plan. Both the rezoning and SDP applications would require additional reviews and approvals by the Mayor and City Council.

TRANSCRIPT OF  
JOINT PUBLIC HEARING  
ON

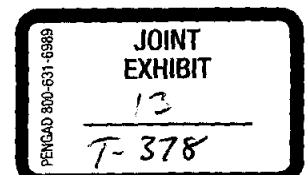
**T-378**

**An Ordinance to Amend Chapter 24 of the City Code, Article III, Section 24-160G.5, Entitled, "Waiver of Development Standards," so as to Amend the Waiver Standards so that the City Council May by Resolution, Waive the Building and Structure Height Requirements in the Corridor Development Zone (CD Zone) as Follows: for a Residential District to Allow a Height Not to Exceed Four (4) Stories or Forty-Eight (48) Feet**

BEFORE THE  
CITY OF GAITHERSBURG  
MAYOR AND CITY COUNCIL  
and  
PLANNING COMMISSION

on  
October 16, 2006

Transcribed by  
Doris R. Stokes



PARTICIPANTS

CITY COUNCIL

Mayor Katz  
Council Vice President Schlichting  
Council Member Alster  
Council Member Edens  
Council Member Marraffa

PLANNING COMMISSION

Chair Bauer  
Commissioner Hopkins  
Commissioner Kaufman  
Commissioner Levy  
Commissioner Winborne

CITY ATTORNEY

Cathy G. Borten

STAFF

Planning and Code Administration Director Ossont

SPEAKERS FROM THE PUBLIC

Jody Kline, Miller, Miller & Canby  
Cathy Drzyzgula, 16 Walker Avenue

Katz           Next item on the agenda is a joint public hearing and tonight we have one. Mr. Ossont will explain that to us.

Ossont       Thank you Mr. Mayor. This is a joint public hearing for text amendment T-378, proposal to amend Chapter 24 of the City Code, Article III, Section 24-160G.5, entitled, "Waiver of Development Standards." The text amendment was duly advertised in the *Gaithersburg Gazette* on September 27, 2006 and October 4, 2006. There are currently 10 exhibits in the record. As I indicated on the cover sheet as well as a memorandum that was distributed to the Mayor and City Council back in August, staff has been working with Fairfield Residential. They are the owners of Broadstone Apartments, formerly Stratford Place Apartments, on a potential redevelopment plan. During preliminary discussions with Fairfield, staff and the design team, agreed that should a redevelopment occur, it would be desirable to redevelop under the Corridor Development Zone rather than the current R-20 Zoning. We came to that determination because the property geographically abuts Frederick Avenue. Staff also believes that any redevelopment should be consistent with the objectives of the CD Zone and more importantly, the Frederick Avenue Master Plan. Redevelopment of the declining properties along the corridor, using appropriate scale and mix of development as well as enhancing the corridor with attractive architecture, streetscape elements are examples of these objectives. During these discussions with Fairfield, staff also identified an issue with height limits that generated a letter from Miller, Miller & Canby, who are here this evening on behalf of Fairfield and has served as the catalyst for this proposed text amendment. If the property were rezoned as CD, the redevelopment would be subjected to a three story or 35 foot height limit. That is the limit for the residential district of the Frederick Avenue Corridor. While the zoning ordinance currently allows the Mayor and Council to grant a height waiver, the waiver is only available in the Employment District which is the area north of Montgomery Village Avenue. The proposed text amendment would allow

the Mayor and Council on a case by case basis to grant a waiver for one additional story in the Residential District, resulting in a total height of four stories and not more than 48 feet. In the event that the proposed text amendment were to be approved, Fairfield would still need to apply for a rezoning application which would include a schematic development plan application as well and all the customary Mayor and Council and Planning Commission approvals from there on out. As I said, Fairfield is here this evening, represented by Jody Kline of Miller, Miller & Canby. And I can answer any questions.

Katz Just so we are very clear, this was prompted by one of the developments that might be asking for a rezoning. This would involve all properties, not just the one property.

Ossont That is correct.

Katz Thank you very much. Any other questions?

Bauer Greg, do remember or is there any kind of background of why there would have been a three story limit for residential. It probably (inaudible) contrast the commercial side.

Ossont I don't remember. Upon review of the Frederick Avenue Master Plan, was done ten years ago, and obviously there was a strong desire for the CD Zoned properties or properties to be zoned CD, to keep those compatible and consistent with the areas that they were abutting and adjacent to. And for the most part in the South Frederick Avenue area which is South Summit, most of the properties there are three stories. I will also tell that the regulating plan for the Frederick Avenue Master Plan does not mention this particular property at all. It is more focused on across the street and the potential development and redevelopments for the area abutting Deer Park. In this corner, since it was R-20 at the time, was

really left out of the regulating plan. We feel that in the event that it was to be redeveloped, we certainly would want to have it in the CD Zone rather than the R-20.

Marraffa Let me ask a follow-up question. If we are going to do the waiver, why would be then be limited to four stories. If we are going to do a waiver, why couldn't we use our best judgment?

Ossont As you recall, that was proposed earlier this year and not well received. One of the things that I found interesting in reviewing that and taking that back to have staff look at it was that, the way that ordinance is set up now in the Employment District, it does allow for a waiver, but has to meet certain standards. I did include those standards for the Mayor and Council would weigh those standards versus the request for the height limit. But the Frederick Avenue Master Plan is also very clear about keeping things consistent and compatible with the areas around them. I think staff believe that anything more than four stories is getting beyond that consistency and compatibility with the areas around south of Summit or the Residential District. So that also played in to the text amendment as well.

Katz Any other questions? This is the time that the Mayor and Council and Planning Commission hear from anyone who would like to speak on this public hearing topic. We ask that you please keep your remarks to no more than three minutes. I will advise you when you have 30 seconds left of your three minutes so that you can begin to finish your statement. Please note that any additional testimony that you might have can be submitted to the City in written form and will be a part of the record just as your oral testimony. Please state your name and address for the record. And we know we have Mr. Kline who wants to speak on this topic. Any other speakers that would like to speak on this topic, if you can please stand behind Mr. Kline. Mr. Kline if you can please begin.

Kline            Good evening, my name is Jody Kline. I do represent the owners of the Broadstone Apartment which was the stimulating spur behind this text amendment. I would like to talk to you about it on two (inaudible). When you adopted the CD Zone, you had in mind a basically a state of hierarchy of heights in the corridor. The residential at three stories and 35 feet, commercial at four stories and 48 feet and the Employment District six stories and 65 feet, but you had the foresight to at least include in the employment sector, the ability to go higher than if you felt that project was worthwhile and meritorious and could meet the standards that you put into the zoning ordinance. This text amendment merely extends that flexibility and an option to use in the residential sector. We realize that it is probably the district has the most scrutiny applied. It is probably the one that has the important compatibility issue. So we understand that it would be scrutinize more than any other sector. Nevertheless, it just merely gives you the opportunity to go ahead and extend the building so it could be one story higher if it is worthwhile. Now that is sought of a general. I think and I said this before, I think anytime you can basically give yourself more flexibility as a way to (inaudible) good projects, I don't know the reason you wouldn't do it. The got the standards there and you can apply them as you see fit. Specifically with our project, we realize that you are going to look at it very seriously. I look at this text amendment as nothing more than, you say ok Mr. Kline, you say you got a good project, let's see what you got. Let's see if can see if you can fit it with (inaudible) and be compatible. Mr. Ossont made a very good point about the heights of buildings in excess of four stories; it might start to get incompatible with the surrounding neighborhood. The bench warrant which we used in our designed exercise to ensure that we can achieve that compatibility, even with the four stories, is to basically try and keep it as close as possible with the existing heights of the buildings that are out there today. And given the opportunity, we will present to you something that meets that task and something that you will find a substantial improvement in that



area. Again, that project has a lot of steps to go forward and that is basically a job we will take on, but just in the abstract this text amendment is something that you ought to be considering to give your zoning ordinance more flexibility. Thank you.

Katz Thank you very much. Please Cathy. If there is anyone else, please stand behind Cathy.

Drzyzgula Cathy Drzyzgula, 16 Walker Avenue. I just want to say that I think this a lot better than the first time around. Obviously, the fact that no one behind me, means there are a lot of people who would agree with that. There were quite a few speakers the first time. I think that this is much more reasonable and has a test for implementing the higher height. And certainly in the long run, if it comes time to redo the Master Plan for the 355 Corridor, five to ten years from now and we have had all kinds of redevelopment of four stories and it seems like that is not big enough, that would give a chance to raise the limit at some point. I think this is a good medium level to increase to on a case by case basis and I strongly support this change.

Katz Thank you very much. No other speakers? It has been suggested that the Planning Commission hold their record open until 5 p.m. on Wednesday, November 8, 2006.

Bauer So with that, what is the pleasure of the Commission?

Levy I move that the text amendment T-378, the Planning Commission hold its record open until 5 p.m. on November 8, 2006 with the recommendation to the Mayor and Council being anticipated being made on November 15, 2006.

Winborne Second.

Bauer           It has been moved and seconded. All those in favor please say aye?

Commission Ayes.

Bauer           That passes unanimously 4-0. We will hold our record open until November 8, 2006, Mr. Mayor.

Katz            Thank you very much. It has been recommended that the Mayor and Council hold their record open until 5 p.m., Tuesday, November 28, 2006. What is the pleasure of the Council?

Marraffa       Mr. Mayor I move that we hold the text amendment T-378 open until 5 p.m., November 28, 2006.

Alster          Second.

Katz            It's been moved and seconded. All those in favor please say aye?

Council        Ayes.

Katz            Opposed? That carries unanimously as well, 4-0. Thank you very much.

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End of Joint Public Hearing

T-378